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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	~~Criminal Appeal No.262 of 2001~~	
	APPELLANTS/: Accused (In Jail)	1. Krishnakumar, S/o Shyamsingh Gond, aged about 30 years. 2. Beersingh, S/o Jhadisingh alias Bhagwansingh Gond, aged about 46 years. 3. Goverdhan alias Bodhan, S/o Ramsingh Gond, aged 31 years. 4. Paras, S/o Keharsingh Gond, aged about 47 years. 5. Premsingh, S/o Jhadisingh alias Bhagwansingh Gond, aged about 31 years. 6. Dukaloo, S/o Lorik Raot, aged about 36 years. 7. Dilesar, S/o Katikram Jaiswal, aged about 36 years. 8. Gangoo, S/o Ramsingh Gond, aged about 33 years. All residents of village Gainji, P.S. Lalpur, Distt. Bilaspur.
		- Versus -
	RESPONDENT:	The State of Chhattisgarh, Through: P.S. Lalpur, District Bilaspur (Chhattisgarh) AND

शासकीय क्षेत्रीय मुद्रण... 7 —30.000.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

~~Criminal Appeal No.191 of 2001~~

APPELLANTS:
(In Jail)

1. Dukalha, S/o Punau Gond, aged 61 years (Now 70 years).
2. Jaisingh, S/o Khelan Gond, aged 36 years (Now 45 years).

Both R/o Village Genji, Police Station Lalpur, Distt. Bilaspur (Chhattisgarh)

- Versus -

RESPONDENT:

State of Chhattisgarh,
Through Station House Officer,
Police Station Lalpur,
Distt. Bilaspur (Chhattisgarh).

{Criminal appeal under Section 374 (2) of the Code of Criminal Procedure}

Division Bench: **Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Sunil Kumar Sinha, JJ.**

14-11-2007

Mr. R.C. Dubey, Mr. Praveen Das, Mr. Ram Kumar Tiwari & Mrs. Hamida Siddique, counsel for the appellants in Cr.A.No.262/2001.

Miss Sharmila Singhai, counsel for the appellants in Cr.A. No.191/2001.

Mr. D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. BHADOO, J.

1. Cr.A.No.262/2001 filed by Krishnakumar, Beersingh, Goverdhan alias Bodhan, Paras, Premsingh, Dukaloo, Dilesar & Gangoo and Cr.A.No.191/2001 filed by Dukalha & Jaisingh are arising out of the same judgment dated 10th January,

शासकी ,0.000.

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आदेश पत्रक (पूर्वानुबद्ध)

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2001 passed by the Additional Sessions Judge, Mungeli in Sessions Trial No.146/91 and also out of the same crime number, therefore, they are being disposed of by common judgment.

2. During the pendency of these appeals, accused Paras had already expired on 11-6-2005, therefore, the appeal in his respect has been held to be abated by order dated 30-3-2006.

3. By these appeals under Section 374 (2) of the Cr.P.C., the appellants have questioned legality and correctness of the judgment of conviction and order of sentence dated 10-1-2001 passed by the Additional Sessions Judge, Mungeli in Sessions Trial No.146/91 whereby learned Additional Sessions Judge convicted and sentenced the accused persons as under: -

Name of the accused	Conviction	Sentence
Dukalha, Krishnakumar, Beersingh, Jaisingh, Goverdhan, Paras, Premsingh & Gangoo	Sec. 148 I.P.C.	R.I. for 2 years and fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 1 month.
Dukaloo & Dilesar	Sec. 147 I.P.C.	R.I. for 1 year and fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 1 month.
Krishnakumar, Beersingh, Goverdhan alias Bodhan, Paras, Premsingh, Dukaloo, Dilesar, Gangoo, Dukalha & Jaisingh	Sec. 302 read with Sec. 149 I.P.C. for committing the murder of Chhedi Ram	Imprisonment for life and fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश		कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
		~~Sec. 326 read with Sec.~~ 149 I.P.C. for causing grievous injury to Rajaram (PW-18).	~~R.I. for 3 years and~~ fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months.
		Sec. 325 read with Sec. 149 I.P.C. for causing grievous injury to Khorbahra (PW-17)	R.I. for 2 years and fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months
		Sec. 323 read with Sec. 149 I.P.C. for voluntarily causing simple hurt to Sammat (PW-11)	R.I. for 6 months and fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 1 month.
		Sec. 323 read with Sec. 149 I.P.C. for voluntarily causing simple hurt to Juthel (PW-10)	R.I. for 6 months and fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 1 month.
		Sec. 323 read with Sec. 149 I.P.C. for voluntarily causing simple hurt to Panchram (PW-15)	R.I. for 6 months and fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 1 month.

4. It was further directed that all the sentences shall run concurrently. It was also directed that the accused persons shall be entitled for set off of the detention period against the sentences imposed upon them, as per the provisions of Section 428 of the Cr.P.C.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
5.	Case of the prosecution, in brief, necessary for the disposal of these appeals is that two months prior to 28-12-1989 deity of Durga was installed in the month of Kunwar at Village: Genji. At that place Kanhaiya, aged about 7-8 years, was sleeping. Accused Krishna went to the place where Kanhaiya was sleeping near the deity and said that why he is sleeping near the deity and inflicted injury to him. Therefore, a Panchayat was convened in the village and the matter was settled. However, Krishna & others were carrying animosity in their mind, therefore, on the fateful day i.e. 28-12-1989 at about 4 p.m. when Jugut Rawat, father of Kanhaiya, was returning from his field and when he reached near the bicycle shop of Lalji Nai, Dukalha Gond attacked him with a Tabbal. When they were quarrelling near the school building, Jaisingh, Krishna, Dukalha, Komal, Beersingh, Jhadiram, Shriram, Prem, Shyamsingh, Gariba Gond, Uday Kalar etc. came on the spot carrying Lathi & Tabbal in their hands and started quarreling. Hearing the commotion, Juthel, Panchram, Sammat, Rajaram, Khorbahra & Chhediram (since deceased) also arrived there. Seeing them, all the accused persons in furtherance of their common object attacked them with Lathi & Tabbal. In the quarrel, Chhediram sustained injury, became unconscious, fell down and died instantaneously. The incident was witnessed by Khakhra Bai, Chanda Bai & Urmila Bai. After the incident, when the accused persons fled from the scene of occurrence, Khakhra Bai brought Chhediram to the house with the help of persons, but on account of fear, she did not report the matter in the night. However, on the next day i.e. 29-12-1989, the matter was reported by Khakhra Bai under Ex.P-57 in Police Station: Lalpur upon which the case was registered under Crime No.55/89 for offence punishable under Sections 147, 148 & 302 read with Section 149 of the I.P.C. and prior to that, Merg intimation Ex.P-90 was also given which was registered at No.4/89.	

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
6.	After registration of crime, H. Tirki (PW-20), Sub Inspector, reached on the spot on 29-12-1989 and prepared inquest Ex.P-92 on the body of Chhediram. Body of Chhediram was sent for post-mortem examination under Ex.P-93 to Primary Health Centre, Lormi, where Dr. A.K. Jaiswal (PW-19) conducted post-mortem, prepared post-mortem report Ex.P-62 and opined that the death of Chhediram was homicidal in nature. The Investigating Officer sent the witnesses namely, Jugutram (PW-13), Sammat (PW-11), Khorbahra (PW-17), Juthel (PW-10), Panchram (PW-15) & Rajaram (PW-18) under requisitions Exs.P-94 to 99 to Primary Health Centre, Lormi for examination of their injuries, where Dr. A.K. Jaiswal (PW-19) examined their injuries and prepared injury reports Exs.P-61, 83 to 87 & 89. Dr. N.K. Soni (PW-5) took X-ray of thumb of Khorbahra and prepared X-ray report Ex.P-50. Dr. C.S. Sharma (PW-14) after taking X-ray prepared X-ray report Ex.P-8 regarding fracture injury sustained by Rajaram. Injuries of Jugutram, Sammat, Juthel & Panchram were found to be simple in nature by Dr. A.K. Jaiswal. Clothes of the deceased were seized under Ex.P-56. Bloodstained soil and plain soil were seized under Ex.P-102. Narayan Prasad Sahu, Patwari, prepared site plan of the place of occurrence under Ex. P-54. Based on the memorandum and at the instance of the accused persons namely, Gariba, Premsingh, Jaisingh, Goverdhan, Swarath, Shriram, Melan, Beersingh, Bedsingh, Krishnakumar, Dukalha & Jhadiram @ Bhagwan Singh & Gangoo, weapons of offences and their clothes were seized. 7. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Mungeli, against 20 persons. During trial, Jhadiram & Swarath had expired, therefore, criminal trial stood abated against them.	

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8. The prosecution in order to establish charges against the accused persons examined 20 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which each of the accused denied the material appearing against him and stated that they are innocent and they have been falsely implicated in the crime. They examined Birbal Das (DW-1), Kotwar & Pannal Lal Sahu (DW-2) in their defence.

9. After hearing counsel for respective parties, learned Additional Sessions Judge convicted and sentenced the appellants as aforementioned, however, acquitted accused Gend Singh, Uday, Koma, Siyaram, Gariba, Shriram, Melan & Shyam Singh of all the charges.

10. It is not out of place to mention here that accused Gangoo sustained injury in the said incident, the matter was reported in the Police Station and charge sheet was filed against Mithu, Jugatram, Holoram, Sammat, Juthel, Khorbahra, Panchram & Gajram for causing simple injury in furtherance of common object of the unlawful assembly to Gangoo. It is stated that in that case, the complainant party have been acquitted.

11. We have heard learned counsel for the parties.

12. Homicidal death of Chhediram has not been disputed by learned counsel for the appellants. Moreover, Dr. A.K. Jaiswal (PW-19) has stated in his evidence that on 30th December, 1989 at about 8 a.m. he conducted post-mortem on the body of Chhediram and noticed that there was incised wound on head in the size of 6" as a result of which skull bone was cut, brain material was coming out, a cut injury on right forearm in the size of ½" x ½", a contusion on left cheek in the size of 3" x 2" and a contusion on right cheek in the size of 1" x ½". On

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dissection, he noticed that skull bone was cut and brain membrane was also cut in the size of 6". Injuries were caused by hard & sharp object. Cause of death was coma as a result of head injury and cutting of cerebral. His report is Ex.P-62. In view of the above evidence it is established that the death of Chhediram was homicidal in nature.

Goverdhan alias Bodhan, Dukaloo, Dilesar & Gangoo

13. As far as involvement of the above accused persons in commission of murder of Chhediram is concerned, learned counsel for the appellants argued that their names do not find place in the first information report. The accused persons were known to the prosecution witnesses and the incident alleged to have taken place in the day light. Therefore, had these accused persons were members of the attacking party, then there was no reason for Khakhra Bai (PW-12) for omitting their names in the F.I.R.

14. On the other hand, learned Additional Public Prosecutor supported the judgment of the trial Court.

15. Having heard learned counsel for the parties, we have perused first information report Ex.P-57. After perusal of the first information report, we find substance in the argument advanced by learned counsel for the appellants and names of these four accused persons do not find place. Khakhra Bai (PW-12), who was the author of F.I.R. Ex.P-57 and mother of deceased Chhediram, has categorically stated in para 1 of her evidence that all the accused persons are known to her by name, all are residents of Village: Genji and Chhediram was her son. In para 7 she has further stated that at the time of giving report, she disclosed the names of all the accused persons and she cannot give any

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reason as to why the names of these accused persons have not been mentioned in the F.I.R. H. Tirki (PW-20), Investigating Officer, in para 38 of his evidence has stated that statements of witnesses were not recorded on 29th, 30th & 31st December, 1989, their statements have been recorded only on 1st January, 1990 and in those statements only, names of these accused persons were mentioned for the first time.

16. As per the evidence of Khakhra Bai (PW-12), these accused persons along with other accused persons were known to her by name. She has also stated that at the time of recording of first information report Ex.P-57, she disclosed the names of these accused persons as assailants, why names of these persons are mentioned in the F.I.R. she cannot assign any reason. No plausible explanation has been offered by her for non-mentioning the names of these persons.

17. If the evidence of this witness (PW-12) is appreciated in the background that she is related witness, moreover, there was animosity between the accused party & the complainant party, the names of these accused persons were mentioned in the police case diary statement for the first time on 1st January, 1990 i.e. 4 days after the incident, even the F.I.R. was registered after 18 hours of the incident, it cannot be said that Khakhra Bai lodged report immediately and looking to large number of accused she was not able to mention the names of all the accused persons even though more than sufficient time was with her. Even though names of these four accused persons were not mentioned in the F.I.R., when police case diary statements were recorded after 4 days of the incident in which for the first time names of these accused persons were mentioned and looking to the background of relationship between accused

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party & complainant party, it cannot be ruled out that names of these persons were included after deliberations and possibility of false implication cannot be ruled out, particularly when deceased Chhediram sustained one grievous injury on head and three simple injuries, two on cheek & one on right forearm, whereas number of assailants alleged to have been 20. Omission of mentioning the names of these accused persons in the F.I.R. is fatal to the prosecution case and their false implication cannot be ruled out particularly looking to the number of injuries.

18. After considering all these points, we are of the considered opinion that presence of these accused persons on the scene of occurrence at the time of commission of crime becomes doubtful and conviction and sentences imposed upon them cannot be sustained.

Krishnakumar, Beersingh, Premsingh, Jaisingh & Dukalha

19. Now, coming to the involvement of above accused persons in the crime in question, Juthel (PW-10), Sammat (PW-11), Jugutram (PW-13), Panchram (PW-15), Khorbahra (PW-17) & Rajaram (PW-18) are injured eyewitnesses, they have sustained injuries which has not been disputed and their injuries were examined by Dr. A.K. Jaiswal (PW-19). Even Rajaram & Khorbahra sustained fractures. All of them have stated about involvement of these accused persons in attacking deceased Chhediram. But in their evidence or in the first information report, there is no evidence as to who caused fatal injury to Chhediram. As per the post-mortem report and the evidence of Dr. A.K. Jaiswal (PW-19), Chhediram died on account of head injury and that was the incised wound. He has stated that the said injury was caused by sharp & hard

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object, even brain was coming out of the injury and brain membrane was also cut. None of the prosecution witnesses has specifically stated that out of these accused persons who inflicted that injury i.e. author of the injury has not been specifically identified by any of the witnesses. There is omnibus statement that all the accused persons attacked with Tabbal & Lathi.

20. Other three injuries sustained by deceased Chhediram were found to be simple on non-vital parts, therefore, it cannot be said that the object was to kill the deceased, but the other accused persons who have not in fact inflicted vital blows on head of the deceased may have knowledge that blows given were likely to cause death.

21. In this case, the F.I.R. was lodged against eleven persons and charge sheet was filed against 20 persons, out of those, Paras died during the pendency of the appeal, whereas accused Jhadiram & Swarath died during trial. Accused Gend Singh, Uday, Komal, Siyaram, Gariba, Shriram, Melan & Shyam Singh have been acquitted by the trial Court and four accused persons namely, Goverdhan alias Bodhan, Dukaloo, Dilesar & Gangoo are being acquitted in these appeals. When the attack was alleged to have been made by large number of persons, possibility cannot be ruled out that fatal injury was caused by other than these five appellants.

22. If any one of the appellants had exceeded the common object and acted on his own, it would be his individual act. Moreover, all the prosecution witnesses have made omnibus statements that all the accused persons whose number was twenty, attacked with Tabbals & Lathis whereas, only one grievous injury was found on head of the deceased, two simple injuries on left & right cheeks

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one on right forearm. Had all the accused persons attacked with Lathis & Tabbals then how only one grievous injury and three simple injuries were on the body of the deceased, no plausible explanation has been offered by any prosecution witness. In this case unfortunately no witness has come forward as to which of the accused has caused which injury. In these circumstances, we find it difficult to convict the accused persons under Section 302 read with Section 149 of the I.P.C. For this view, we are fortified by the judgment of the Apex Court in the matter of **Sarman and others v. State of Madhya Pradesh** reported in **AIR 1993 SC 400**.

23. Therefore, offence against these accused persons does not travel beyond Section 304 Part-II read with Section 149 of the I.P.C.

24. As far as conviction under Section 326 read with Section 149 of the I.P.C. for voluntarily causing grievous hurt by dangerous weapons or means to Rajaram, conviction under Section 325 read with Section 149 of the I.P.C. for voluntarily causing grievous hurt to Khorbahra, as also conviction under Section 323 read with Section 149 of the I.P.C for voluntarily causing simple injuries to Juthel, Panchram & Sammat are concerned, learned counsel for the appellants have not challenged conviction and sentences imposed upon these accused persons under those counts. Moreover, each of the persons who sustained injuries has also stated regarding infliction of injuries by the members of unlawful assembly to them.

25. In the result,

- The appeal in respect of Goverdhan alias Bodhan, Dukaloo, Dilesar & Gangoo is allowed, conviction and sentences imposed upon them under

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Sections 302 read with Section 149, 326 read with Section 149, 325 read with Section 149, 323 read with Section 149, 323 read with Section 149 & 323 read with Section 149 of the I.P.C. are set aside. Conviction and sentences imposed upon Goverdhan & Gangoo under Section 148 of the I.P.C. and Dukaloo & Dilesar under Section 147 of the I.P.C. are also set aside. They are acquitted of the said charges. The accused persons are said to be in detention since the date of judgment i.e. 10th January, 2001. They be set at liberty forthwith, if not required in any other case.

- So far as accused Krishnakumar, Beersingh, Premsingh, Jaisingh & Dukalha are concerned, their appeals are partly allowed. Conviction and sentences imposed upon them under Sections 148, 326 read with Section 149, 325 read with Section 149, 323 read with Section 149, 323 read with Section 149 & 323 read with Section 149 of the I.P.C. are maintained. Conviction and sentences imposed upon them under Section 302 read with Section 149 of the I.P.C. are set aside, instead thereof they are convicted under Section 304 Part-II read with Section 149 of the I.P.C. and each one of them is sentenced to undergo R.I. for seven years.

- Krishnakumar, Beersingh, Premsingh, Jaisingh & Dukalha are on bail. As per record, they were in detention during investigation, for some time during trial and after conviction till they were granted bail by this Court viz.,

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Name of the accused	In Jail		Period of detention
	From	To	
Krishnakumar	30-12-1989	8-6-1993	3 years 5 months
	10-1-2001	20-10-2004	3 years 9 months
Beersingh	30-12-1989	8-6-1993	3 years 5 months
	10-1-2001	20-10-2004	3 years 9 months
Premsingh	4-1-1990	8-6-1993	3 years 5 months
	10-1-2001	20-10-2004	3 years 9 months
Jaisingh	2-1-1990	8-6-1993	3 years 5 months
	10-1-2001	28-9-2004	3 years 8 months
Dukalha	30-12-1989	8-6-1993	3 years 5 months
	10-1-2001	10-5-2004	3 years 4 months

- Out of the above five accused except Dukalha remaining four accused persons have completed seven years of imprisonment imposed upon them, their bail bonds are discharged and they need not surrender before the trial Court.
- Accused Dukalha remained in detention during trial and appeal for a period of six years nine months, therefore, he has to surrender to the bail bonds before the trial Court to serve out remaining sentence of three months. However, it is made clear that if he has already earned any remission or otherwise entitled for any other benefit, jail authorities will be at liberty to extend the same.

Sd/-
L.C.BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

Soma